Contract Law CHAPTER 13 Contracts in Writing and Third-Party Contracts Page 277 CASE OPENER Fallout from a Forgettable Fight On June 28, 1997, in Las Vegas, Nevada, heavyweight boxers Mike Tyson and Evander Holyfield met for what was to be a night to remember. During the third round of the fight, a desperate Tyson bit off a piece of Holyfield's ear. The fight continued until moments later when Tyson bit Holyfield's other ear.1 Tyson was disqualified, and numerous fans were unhappy with the outcome. Some fans were so outraged they decided to sue Tyson, the fight promoters, and the telecasters, seeking a refund.2 The fans sued on the basis of, among other theories, a claim to being third-party beneficiaries to various contracts into which the defendants had entered. Are the fans entitled to refunds based on a theory of third-party beneficiary rights? What type of beneficiaries would the fans have to be to enforce contractual rights? If you were one of the fight promoters, what sorts of contractual duties would you have to the viewers? LEARNING OBJECTIVES LO 13-1 Identify the types of contracts that fall within the statute of frauds. LO 13-2 Recognize the elements required for a writing to satisfy the statute of frauds. LO 13-3 Describe the purpose of the parol evidence rule. LO 13-4 Differentiate between an assignment and a delegation. LO 13-5 Recall the rights and duties of an assignee. LO 13-6 Differentiate between an intended and an incidental beneficiary. LO 13-7 Differentiate between a creditor beneficiary and a donee beneficiary. Page 278 Written contracts provide certain advantages that oral contracts lack. When disputes may arise regarding the specifics of the terms of an oral contract, such disputes are easier to settle when the contractual terms are solidified in writing. In addition, when parties to a contract write down their terms, the moment of writing allows both parties to reconsider their terms and ensure that the parties are advocating what they desire in the contract. In general, written contracts help business contracting flow more smoothly. The idea of requiring certain contracts to be in writing comes from the English Act for the Prevention of Frauds and Perjuries, passed in 1677. To prevent disputes over the existence of a contract, the act required that certain types of contracts, to be legally enforced, must be in writing and signed by the party denying the existence of the contract. In the United States, the term statute of frauds is somewhat misleading because there is no federal statute of frauds; rather, such legislation exists at the state level, with the exception of Louisiana. Maryland and New Mexico have statutes of frauds created by judicial decision rather than by legislation. Interestingly, the English have repealed almost all their requirements for writing, but American states and courts are still expanding the requirements for what falls within the statute of frauds. The term statute of frauds is also

misleading in another way: The statute of frauds does not relate to fraudulent contracts, nor does it address the issue of illegal contracts. Rather, the statute addresses the enforceability of contracts that fail to meet the requirements set forth in the statute. Furthermore, the statute serves to protect promisors from poorly considered oral contracts by requiring certain contracts to be in writing. This chapter addresses some commonalities among the statutes of frauds of different states, while referring simply to the "statute of frauds" as if it were a unitary law. The chapter examines which contracts need to be in writing as well as exceptions to the rule. Then the chapter examines the parol evidence rule, which discusses what types of oral evidence are admissible, and when, as related to contracts within the scope of the statute of frauds. Although a contract is typically an agreement between two parties, sometimes third parties have rights in the contract as well, either through assignments or as beneficiaries. The second half of this chapter focuses on how third parties gain rights to contracts.

Statute of Frauds The statute of frauds has three main purposes. The first is to ease contractual negotiations by requiring sufficiently reliable evidence to prove the existence and specific terms of a contract. The second is to prevent unreliable oral evidence from interfering with a contractual relationship. Requiring a written contract prevents the admittance of oral evidence denying or substantially altering the contract. (This chapter discusses the admissibility, or lack thereof, of oral evidence later, in the section on the parol evidence rule.) The third is to prevent parties from entering into contracts with which they do not agree. The statute's requirements impose on parties the need to consider the terms carefully, agree to them, write them down, and sign the contract.

Contracts Falling within the Statute of Frauds LO 13-1 Identify the types of contracts that fall within the statute of frauds. As previously stated, only specific types of contracts fall within the statute of frauds and thus are required to be evidenced in writing. These types of contracts are (1) contracts whose terms prevent possible performance within one year, (2) promises made in consideration of marriage, (3) contracts for one party to pay the debt of another if the initial party fails to pay, and (4) contracts related to an interest in land. Although required to be in writing under the Uniform Commercial Code (UCC) and not the statute of frauds, a related fifth category is contracts for the sale of goods totaling more than $500.3 Page

279 Contracts Whose Terms Prevent Possible Performance Within One Year Contracts whose performance, based on the terms of the contract, could not possibly occur within one year fall within the statute of frauds and, therefore, must be in writing.4 It is important to realize that the one-year period begins to run the day after the contract is created, not when the contract is scheduled to begin. The test for compliance with the one-year rule is not related to the likelihood of the completion of the contract within one year. Rather, the test considers the possibility of completing the contract within one year. For example, if Robert contracts with Elise for lifetime employment, they do not have to write and sign the agreement because it is possible for the contract to be completed within one year: Robert could die after two days of work. Moreover, Robert and Elise's contract, if oral, would be enforceable because it is not within the statute of frauds. The possibility that a contract's terms could be performed within one year removes the contract from the statute's written requirements. Similarly, contracts for complex construction projects need not be in writing because, theoretically, they can be completed within one year if the crew works around the clock every day, even if the scenario is highly unlikely. Used by permission of Stu Rees, Stu's Views. Case 13-1 illustrates how important the facts are when ascertaining whether a contract cannot be performed within a year. It also highlights the fact that the emphasis is on whether the contract could be performed within a year, not whether it actually was performed within a year. CASE 13-1 NORTHERN GROUP, INC. v. TECH 4 KIDS, INC. 352 F.Supp.3d 882 (E.D. Wisconsin 2018) FACTS: Northern Group, Inc. is a Wisconsin corporation that contracts with manufacturers and suppliers to develop marketing strategies and promotions to third-party retailers. In exchange for these services, Northern Group receives a commission based upon a percentage of total sales the manu-facturer makes to the retailer. Tech 4 Kids (T4K) is a firm based in Ontario, Canada, that produces children's toys and entertainment products. In 2008, T4K entered into an oral agreement with Northern Group in which Northern Group would provide marketing services to T4K in exchange for commission. Part of the agreement involved Northern Group marketing T4K's products to several American retailers. Pursuant to the agreement, T4K was to pay Northern Group 4 percent of the net sales price of products purchased by the retailers on a quarterly basis. In 2016, T4K advised Northern Group in writing that it was terminating the agreement. Northern Group sued T4K for breach of contract. In response, T4K argued that this claimed oral contract was void because of Wisconsin's statute of frauds. According to T4K, the contract could not have been completed within a year and therefore was required to be in writing. ISSUE: Could the contract

have been completed in less than a year, and therefore not fall under the statute of frauds? REASONING: Northern Group alleges that T4K is in breach of its oral agreement regarding commissions because T4K refuses to pay Northern Group the commissions it earned before T4K terminated the agreement. T4K, on the other hand, contends that Northern Group's breach of contract claim fails because the underlying contract is void under Wisconsin's statute of frauds. Under Wisconsin law, a contract that is not in writing is void if it could not have been performed within a year. In other words, the question is not whether the contract was performed within a year or even whether the parties anticipated that it would be performed within a year. The Wisconsin Supreme Court has long interpreted the language of the statute to mean "[i]f, by possibility, an agreement may by its terms, be executed within [one year], it is not within the statute." Only if the contract is by its terms inca-pable of being performed within a year is it void. T4K's argument that its contract with Northern Group is void under Wisconsin's statute of frauds fails. Although the complaint does allege that the retailer agreements Northern Group arranged generally required a lengthy process and sometimes took years, the question is not the time it actually took to perform the contract, but whether it could have been performed within a year. Northern Group could have arranged sales agreements with retailers within a year and been paid its commission. The fact that T4K had developed a practice of paying commissions quarterly, does not mean it was not possible to pay more promptly. By its terms, the contract was terminable at will by either party, and thus either party could have quickly concluded that continuation was not in its interest. These elements support the likelihood that a back-and-forth email exchange between a buyer and seller about the sale of a property, perhaps for something as substan-tial as a home, could very well be enforced if the parties agree to the terms discussed in the email —even without a written and signed comprehensive document. If the buyer and seller sign their emails with their full names, and the three elements above are satisfied, the buyer and seller will most likely be legally bound to the terms agreed upon in the email exchange. Therefore, the contract was capable of being performed within a year and it is therefore not void under the statute of frauds. DECISION AND REMEDY: T4K's motion to dismiss DENIED. SIGNIFICANCE OF THE CASE: This case illustrates how the one-year rule of the statute of frauds is concerned with whether a contract could be completed in less than a year regardless of how much time it actually took to complete the contract. CRITICAL THINKING What facts, had they been present, might have changed the outcome of this case? ETHICAL DECISION MAKING What values are furthered by this case? Page 280 Legal Principle If a

contract can possibly be performed within a year, even if such performance is highly unlikely, then the contract does not need a writing to be enforceable. Promises Made in Consideration of Marriage Agreements regarding marriage in which one party is gaining something other than a return on his or her promise to marry are within the statute of frauds and must be in writing.5 In other words, when one party promises something to the other as part of an offer of marriage, the contract must be in writing to be enforceable. Page 281 It is important to realize that mutual promises to marry do not fall within the statute of frauds. For example, if Ed and Jeanie promise each other they will get married, this agreement does not need to be in writing because it does not fall within the statute. Although a mutual promise to marry does not fall within the statute of frauds, prenuptial agreements do. A prenuptial agreement is an agreement two parties enter into before marriage that clearly states the ownership rights each party enjoys in the other party's property. To be enforceable, prenuptial agreements must be in writing. Furthermore, although consideration is not legally required, courts tend to privilege prenuptial agreements that involve consideration. The reason consideration is privileged is that a prenuptial agreement is not automatically enforceable just because it is in writing. Although writing is required, it is not sufficient to establish enforceability. Consideration at least offers evidence that both parties understand and agree to the terms of the contract and that the contract is not biased in favor of one of the parties. Contracts For One Party to Pay The Debt of Another if the Initial Party Fails to Pay The contracts involving promises to pay a debt that are within the statute of frauds are of a very limited kind. These promises are referred to as secondary promises, collateral promises, or suretyship promises. All of these terms refer to agreements in which a third party agrees to pay the debt owed by another party if that other party fails to pay his or her debt. For example, Helen enters into a contract with Tom to sell Tom her car. Subsequently, Diana agrees to pay Tom's debt if he fails to pay Helen the money he owes her. To be enforceable, Diana's promise needs to be in writing because it is within the statute. It is important to understand the distinction between primary and secondary obligations to know when the statute necessitates a written agreement. Primary obligations are debts entered into in an initial contract. In our car-sale example, the primary obligation is Tom's promise to pay Helen for the car. Primary obligations are not within the statute of frauds and, therefore, need not be in writing to be enforceable. Secondary obligations, however, are within the statute and need to be in writing. A secondary obligation, as explained earlier, arises when a party outside a primary agreement promises to fulfill one of the

original party’s (the primary debtor’s) obligations if the original party (primary debtor) fails to fulfill his or her obligation. A specific instance of a secondary obligation involves the administrator or executor of an estate. Administrators and executors of estates are responsible for paying the debts of an estate and then dividing the remaining wealth among the heirs. Although an agreement to pay the estate’s debts with the estate’s funds need not be in writing, promises the administrator or executor makes to pay those debts personally are within the statute of frauds and must be in writing. Because the administrator or executor is paying with his or her own money, and not the estate’s, the promises must be in writing to be enforceable—the administrator or executor has assumed a secondary obligation. There is an exception concerning when a promise to pay someone else’s debt needs to be in writing: the main-purpose rule. If the main purpose for incurring a secondary obligation is to obtain a personal benefit, the promise does not fall within the statute and need not be in writing.6 The assumption is that a party attempting to achieve a personal benefit will not back out of the agreement; thus there is no need for a written record of the agreement. The court’s job is to use the context surrounding the agreement to determine the third party’s main purpose for entering the agreement. Contracts Related to an Interest in Land Under the statute of frauds, land is considered real property, such as the land and soil itself, as well as anything attached to the land, such as trees or buildings. The statute is intended to prevent oral claims to the existence of a contract for the sale of land. That is, because the statute requires a writing as evidence of the contract, a claim to an oral contract for the sale of land is not enough to prove such a contract existed. Page 282 In addition to contracts for the sale of land, contracts transferring other interests in land are also within the statute of frauds. Mortgages and leases are within the statute of frauds because they are considered transfers of interest in land. GLOBAL Context Westbend61GmbH/Alamy Stock Photo Canada and the Statute of Frauds Canada is among the numerous Western countries that have adopted a version of the English statute of frauds from 1677. The Canadian version of the statute of frauds, adopted in Ontario in the 19th century, differs in that it primarily contains legislation outlining requirements for the sale of land. More recently, Canadian courts have been deliberating an issue with its statute of frauds that could not have been foreseen at the time of its establishment: Under what circumstances can conducting the sale of land via email, or any other virtually written exchange, be upheld in a court of law? The precedent set in the British Columbia Court of Appeal in 2015 from the decision of Vancouver Canucks Limited Partnership v Canon Canada Inc.

provides elements that virtual exchanges must satisfy to be considered a legally binding contract: There is intention to be bound. Drafting of a formal contract is not a condition precedent. All essential terms have been agreed upon. Source: https://weilers.ca/can-email-between-a-homebuyer-and-seller-be-legally-binding/ Determining exactly what constitutes an interest in land under the statute of frauds is difficult. Although the sale of land and the transfer of mortgages and leases are within the statute, a number of things that seem as if they are interests in land do not fall within the statute. For example, promises to sell crops annually, agreements between parties for profit sharing from the sale of real property, and boundary disputes that have been settled through the use of land are not within the statute of frauds and, therefore, do not require evidence in writing. The Case Nugget presents a case related to land in which the parties disagreed about whether a writing was needed. CASE Nugget What Is an “Interest in Land?” Shelby’s, Inc. v. Sierra Bravo, Inc. Court of Appeals of Missouri, Southern District 68 S.W.3d 604 (2002) Shelby’s and Sierra entered into a written agreement in which Shelby’s granted Sierra permission to use Shelby’s land as disposal for waste and debris Sierra removed as part of the construction of a new highway. Shelby’s claimed that the parties also entered into an oral contract for Sierra to construct a waterway and building pad on Shelby’s property. Sierra never completed the construction and denied that an oral contract existed. Shelby’s sued, and the jury found in its favor. Sierra appealed on the basis that the oral agreement was within the statute of frauds and therefore unenforceable. Sierra saw the alleged oral agreement as involving a sale of an interest in land, which is within the statute of frauds. Therefore, the agreement, to be enforceable, would have had to be in writing. The court firmly disagreed with Sierra’s argument. The court stated We agree with the well-reasoned argument of Respondent [Shelby’s]. The contract in this case was not a “sale,” much less a sale of an interest in lands. . . . Here, there was no transfer of ownership or title. The written agreement gave Appellant [Sierra] permission to deposit debris and soil on Respondent’s land, not the right to do so. The oral contract was for the construction of a waterway and building pad and passed no interest in the land. . . . We decline to create a new category to which the statute of frauds applies, that of a contract for services for the deposit of dirt and soil on land. The trial court did not err in denying Appellant’s motion for judgment notwithstanding the verdict. Appellant’s point is denied and the judgment of the trial court is affirmed. Page 283 Contracts for the Sale of Goods Totaling More Than $500 Agreements in which the total price for a sale is $500 or more are required by the UCC, Section 2-201, to be recorded in a written contract or a

memorandum. To satisfy this UCC requirement, the contract or memorandum need only state the quantity to be sold. Buyer, seller, price, and method of payment do not need to be included in the writing according to the UCC. Contractual terms beyond quantity may be written, but they need not be. In fact, terms other than quantity can be inexact or left out of the writing as long as what is written does not contradict the parties' agreement. The contract will be enforceable for the stated quantity and not a unit more. Furthermore, for the contract to be enforceable against a party, the party against whom action is sought must have signed the written document. In addition to sales contracts for $500 or more, other specific situations under the UCC for contracts need to be in writing. These situations are contracts involving the sale of securities and personal property if the sale is greater than $5,000 in price.7, 8 Further Requirements Specific to Certain States As discussed at the beginning of the chapter, the statute of frauds is actually state law. Consequently, certain states have various requirements not found in other states. Although these requirements are not universal, it is important to note some of the distinctive elements of the statutes of frauds in a minority of the states. Within their statutes of frauds, a minority of states have special provisions related to promises to pay debt. One example pertains to a promise to pay a debt that has already been discharged because of bankruptcy. For such an agreement to be enforceable, it must be in writing to prevent the promisor from hiding behind the fact that the debt has been discharged. Another example involves a promise to pay a debt where collection of the debt is barred by a statute of limitations. As in the first example, if the agreement is not in writing, the promisor can easily prove that he or she does not need to pay. Therefore, the statutes of frauds in certain states require both of these types of promises to be in writing to be enforceable. Equal Dignities Rule According to this rule, which is used in some states, if one party (the principal) hires another person (the agent) to negotiate a contract that must be in writing under the Statute of Frauds, the contract giving the agent the power to act for the principal must also be in writing. Thus, if Roberto contracts with Carmine to purchase Essex Farms for him, both the contract between Roberto and Carmine and the contract for the purchase of the farm must be in writing. The former must be in writing because of the Equal Dignities Rule and the latter because of the Statute of Frauds. Exhibit 13-1 summarizes the contracts that fall within the statute of frauds and presents a mnemonic for remembering them. Page 284 Exhibit 13-1A Mnemonic for Remembering Which Contracts Fall within the Statute of Frauds Circumstances in Which the Statute of Frauds Applies (MY LEGS) M Marriage Contracts made in consideration of marriage Y Year Contracts

whose terms prevent possible performance within one year L Land Contracts related to an interest in land E Executor Contracts in which the executor promises to pay the debt of an estate with the executor’s own money G Goods Contracts for the sale of goods totaling more than $500 S Suretyship Contracts involving secondary obligations (promise to pay the debt of another) or suretyships

Exceptions to the Statute of Frauds As with most legal rules, there are certain exceptions to which the statute of frauds does not apply, even though under normal circumstances it would. These exceptions are (1) admission, (2) partial performance, (3) promissory estoppel, and (4) although not under the statute of frauds, exceptions under the UCC. Admission An admission is a statement made in court, under oath, or at some stage during a legal proceeding in which a party against whom charges have been brought admits that an oral contract existed, even though the contract was required to be in writing.9 All states except Louisiana and California adhere to the admission exception. To the extent that the statute of frauds is intended to necessitate proper evidence of agreements, the admission exception is well reasoned. However, to the extent that the statute of frauds is intended to cause people to be cautious about clearly establishing the specifics of their agreements, the admission exception seems to unnecessarily punish honest parties while rewarding dishonest ones. Similar to the statute of frauds, the UCC makes a comparable exception in cases when parties admit to the existence of an oral contract. However, unlike the statute of frauds, the UCC specifies that an oral contract required to be in writing but admitted to in court will be enforceable only for the quantity admitted.10 Partial Performance Although the statute of frauds requires a writing for sales of interests in land, there is an exception based on the theory of partial performance. Under partial performance, if the buyer in an alleged contract for the sale of land has paid any portion of the sales price and either has begun to improve the land permanently or has taken possession of the land, the courts will consider the contract partially performed, and this partial performance will amount to proof of the contract. Accordingly, partial performance can override the statute’s requirement for a written agreement. The logic is that the actions of both parties demonstrate the existence of their agreement, so the agreement no longer needs to be in writing to be enforceable even though a writing would otherwise be needed. Under similar sections of the UCC, a buyer or seller is responsible for an oral contract that should have been in writing to the extent that he or she accepts payment or

delivery of the goods in question.11 Promissory Estoppel Under certain circumstances, when a party relies on an oral contract that is within the statute of frauds, and therefore should have been in writing, the reliance can create a situation in which the contract is enforceable. Promissory estoppel is the legal enforcement of an otherwise unenforceable contract due to a party's detrimental reliance on the contract. Page 285 For promissory estoppel to be in effect, the party's reliance must be to his or her own detriment. Furthermore, the reliance must have been reasonably foreseeable; that is, the party who did not rely on the contract should have known that the other party would rely on it.12 Suppose that, after accepting an offer on your current house, you enter into a contract to buy a house. However, the new house costs more than the sales price of your old house, and the person from whom you are buying knows about the sale of your old house and the difference in the prices. To pay for the price difference, you sell your collection of rare coins. Unfortunately, during this whole process, you forgot to create a written contract for the purchase of the new house. The other person now refuses to sell the house to you. You are now homeless and have sold off your only real assets. Because the other person reasonably should have known you were relying on the contract, and because you did so to your own detriment, under promissory estoppel you could win performance of the oral sales contract. Exceptions under the UCC In addition to the exceptions under the statute of frauds, exceptions also exist under the UCC about when a contract ordinarily required to be in writing need not be in writing. For instance, under the UCC, oral contracts between merchants need not be in writing to be enforceable. Therefore, if one merchant agrees to sell goods to another, the contract is enforceable even if it is not in writing. Likewise, oral contracts for customized goods are enforceable even if they would normally have to be in writing. The reasoning is that customized goods are not likely to be able to be sold to a general audience. Accordingly, if one party backs out of an oral arrangement for the sale of customized goods, the party that did not back out probably incurred unreasonable costs due to the negated contract. To prevent one party from bearing the cost of a canceled contract, the UCC allows oral agreements to be enforced when they are for customized goods.

Sufficiency of the Writing LO 13-2 Recognize the elements required for a writing to satisfy the statute of frauds. Although there are no specific requirements for the form of a written contract under the statute of frauds, certain elements need to be present for a writing to constitute proper

evidence of a written contract under the statute. It is worth mentioning that, in the absence of a single standard form, multiple documents can together evidence the existence of a written agreement under the statute. Required elements in the writing include the identification of the parties to the contract, the subject of the agreement, the consideration if any is given, and any pertinent terms of the contract. Furthermore, the contract must be signed, but the signature does not need to be located at the end, which is the traditional location for a signature. In fact, the signature need not be the full signature; a mark, such as an initial, is permissible as long as the mark is placed with the intent to function as a signature. Although it is standard for both parties to sign the agreement, because the writing is being offered as proof of an agreement, only the party against whom action is sought needs to have signed the writing. If only one party signed, the agreement is enforceable against the signing party but not against the nonsigning party. The required elements can be contained in a memorandum, a written document, or a compilation of several written documents. While multiple documents can together evidence the existence of a written agreement under the statute, as long as the documents reference one another, it is not always easy to use multiple documents to satisfy the statute. Case 13-2 illustrates how difficult that task can be. Page 286 CASE 13-2 HERITAGE CONSTRUCTORS, INC. v. CHRIETZBERG ELECTRIC, INC. AND RICHARD MARC CHRIETZBERG Court of Appeals of Texas, Sixth District 2015 Tex. App. LEXIS 1974 (2015) FACTS: In 2011, Heritage Constructors Inc., a general contractor that specializes in building water treatment plants, was preparing a bid to become the general contractor for the TexAmericas Center-East wastewater treatment plant improvement project. Heritage estimated that the project would take about 19 months to complete and intended to complete eighty to eighty-five percent of the project itself, but the project’s electrical work necessitated the use of a subcontractor. Before Heritage’s bid was due, Heritage was contacted by two electrical companies attempting to bid on a subcontract for the electrical work. Electrique Corporation bid $886,400 to perform electrical work on the project, and Chrietzberg Electric bid $704,857. With Chrietzberg being the lower bidder, Heritage took that bid and included Chrietzberg on the bid to TexAmericas. TexAmericas eventually awarded the bid to Heritage, and Heritage and Chrietzberg congratulated each other on the successful bid. After receiving an executed contract from TexAmericas, Heritage sent Chrietzberg a proposed subcontract. Shortly thereafter, Chrietzberg notified Heritage that it was withdrawing its bid. Heritage asked Chrietzberg to reconsider, without success, and so Heritage accepted Electrique’s more expensive contract after accepting certain conditions of

Electrique’s. Heritage sued Chrietzberg for breach of contract, promissory estoppel, and negligent misrepresentation. The trial court ruled in favor of Heritage, but awarded Heritage only twenty-eight percent of the fees it had asked for. Heritage appealed, and Chrietzberg cross-appealed, claiming that all of Heritage’s causes of action were barred by the statute of frauds. QUESTION: Were Heritage’s claims of breach and promissory estoppel invalid due to the statute of frauds? REASONING: This case primarily revolved around the requirement that contracts that cannot be completed in under a year must be in writing. The Court reviewed the original project proposal, which indicated that the agreement between Heritage and Chrietzberg began on December 31, 2011, and also indicated a projected project completion date of July 31, 2013. The Court ruled that the agreement would have required more than a year to complete and thus fell under the statute of frauds. Next, the Court had to determine whether the agreement was enforceable under the statute of frauds. The Court found a precedent for this case in a similar case, Cohen v. McCutchin. In that case, the United States Supreme Court had ruled that because there was no writing that identified the plaintiff as a party to the agreement in question, the agreement did not satisfy the statute of frauds. Similarly, in the bid documents, which is where the agreement between Heritage and Chrietzberg supposedly laid, Chrietzberg was not once mentioned as a party to the agreement. Heritage also failed to point out any actions it took that are unequivocally referable to its agreement with Chrietzberg. The agreement fell under the statute of frauds but failed to satisfy it, thus the Court ruled that Chrietzberg cannot be held liable for breach of the agreement. The Court then determined that there was no evidence that distinguished any of the damages supposedly caused by breach from damage caused by promissory estoppel. Therefore, because Chrietzberg was not liable for breach damages, it was also not liable for promissory estoppel damages. Similarly, the negligent misrepresentation damages were indistinguishable from the other damages and so too were denied. DECISION: The Court reversed the trial court’s ruling on Heritage’s breach of contract and promissory estoppel claims and affirmed their denial of negligent misrepresentation claims. SIGNIFICANCE: This case exhibits the statute of frauds in action and demonstrates the significance of keeping all important agreements in detailed writing. CRITICAL THINKING Notice that the court relied on an analogy in coming to its decision that the writing was insufficient. Do you think the analogy is strong? Why or why not? Can you think of any other argument that Heritage might have made to obtain compensation in this case? ETHICAL DECISION MAKING What values are enhanced by this decision? What values were given less weight by the

judges in this decision? Page 287 The requirements under the UCC for sales contracts vary slightly from those under the statute of frauds. The UCC does not require the parties to be named in the agreement. Rather, the UCC requires the writing to state clearly the quantity to be sold. Similar to the statute of frauds, the UCC allows a variety of written documents to constitute a writing. Some documents that count include faxes, emails, invoices, bills of lading, sales slips, checks, or any combination of these documents. Also noteworthy is the fact that oral testimony can be elicited that establishes the existence of a writing that would meet the requirements under the statute of frauds. For example, testimony regarding an invoice for products sold, when the actual invoice is not produced, is enough in certain states to meet the requirements under the statute. Exhibit 13-2 provides heca cklist to help you remember the elements needed for a writing that satisfies the statute of frauds. Exhibit 13-2Requirements of a Writing Sufficient to Satisfy the Statute of Frauds under the Common Law

Parol Evidence Rule LO 13-3 Describe the purpose of the parol evidence rule. The parol evidence rule is designed to preserve the sanctity of a written contract and give parties the security of knowing that if they take the time and effort to place their fully integrated agreement into a written document, they can have confidence that the court will enforce that document, and no evidence of any other prior or contemporaneous agreement that would contradict the terms of that written document will be recognized by the court. The parol evidence rule states that oral evidence of an agreement made prior to or contemporaneously with a written agreement is inadmissible when the parties intend the written agreement to be the complete and final version of their agreement.13 Parol in parol evidence rule means “speech” or “words,” specifically words outside the original writing. The purpose of the parol evidence rule is to restrict evidence from being admitted that substantially contradicts the agreement in its written form. Therefore, evidence of prior agreements and negotiations, as well as of contemporaneous agreements and negotiations, is typically excluded under the parol evidence rule. A written agreement is assumed to be complete, and evidence contradicting this final agreement usually impedes business transactions, which is why the parol evidence rule exists. In other words, the parol evidence rule applies when you have a fully integrated agreement. Page 288 However, when a court determines that the written agreement does not represent a complete and final version of the agreement, evidence may be admissible to further the court’s understanding of the agreement.

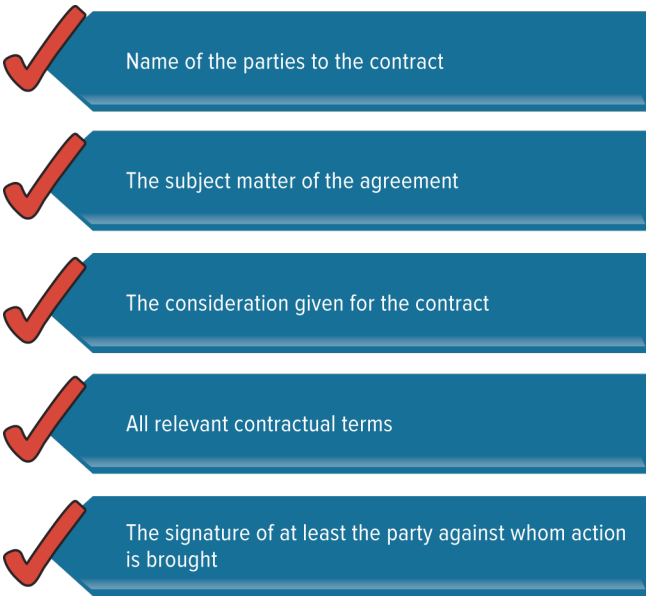
The admissible evidence is limited to additional elements, missing in the writing, that are consistent with the written agreement. These elements may be terms typically included in similar transactions that were left out of the specific writing, or they may be separate agreements in which consideration was offered. A cautionary note is in order: “Parol evidence rule,” on its face, is a misnomer. First and foremost, parol evidence applies to both parol (spoken words) and written speech. The parol evidence rule covers evidence extrinsic to the original writing and is not limited to spoken words. Second, the parol evidence rule is not a rule of evidence but, rather, relates to substantive legal issues, namely, what constitutes a legally binding agreement and how we know what the agreement is. Third, the parol evidence rule is not a unitary concept or rule but an amalgamation of different rules and conditions. Although the parol evidence rule applies to writings created at the same time as the written agreement, these writings tend to be treated differently than prior or contemporaneous oral agreements. That is, the writings are more readily admitted as part of the written agreement than is oral evidence regarding conditions or terms in the final agreement. The reasoning is that judges are allowed discretion in determining which documents constitute the final contract. As long as the contemporaneous written documents do not substantially contradict what is in the final writing, judges can deem these other writings part of the final written agreement. Consequently, the parol evidence rule does not usually exclude extrinsic written evidence. Sometimes parties take the initiative and attempt to signal to judges that the written agreement is intended to be the final and complete statement of the agreement. A merger clause is a clause parties include in a written agreement within the statute of frauds that states that the written agreement accurately reflects the final, complete version of the agreement. Not all courts consider merger clauses to be conclusive proof of a contract. Nonetheless, where merger clauses are accepted, they greatly reduce the amount of guesswork courts must do in determining whether a written agreement was in fact intended to be the final statement of the agreement.

Exceptions to the Parol Evidence Rule As with the statute of frauds, there are exceptions to the general applicability of the parol evidence rule. That is, there are situations in which parol evidence, which is normally excluded, may be admissible in court. These exceptions pertain to (1) contracts that are

subsequently modified, (2) contracts conditioned on orally agreed-on terms, (3) contracts that are not final because they are part-written and part-oral, (4) contracts with ambiguous terms, (5) incomplete contracts, (6) contracts with obvious typographical errors, (7) voidable or void contracts, and (8) evidence of prior dealings or usage of trade. Contracts That Have Been Subsequently Modified Although parol evidence contradictory to the final terms is inadmissible, evidence regarding a contract's subsequent modification is admissible. To be admissible, the modification must have been made after the writing, and the evidence must clearly indicate this later modification. Despite the allowance of evidence to demonstrate modifications, not all evidence of modification is admissible. If the agreement is required to be in writing under the statute of frauds, oral modifications are unenforceable. However, oral evidence of a subsequent written agreement is admissible. In addition, if the contract's terms require modification to be in writing, oral modifications are inadmissible and unenforceable.14 Contracts Conditioned on Orally Agreed-On Terms The parol evidence rule does not prevent parties from introducing evidence proving the written agreement was conditioned on terms agreed to orally. The reason the parol evidence rule does not apply is that the evidence being elicited does not substantially modify the written agreement. Rather, what is at issue with such evidence is the enforceability of the contract as written. No terms are altered, so the parol evidence rule does not apply. Page 289 When an entire contract is conditioned on something occurring first, that first thing is known as a condition precedent. Evidence of the existence of a condition precedent agreed to orally is admissible, as stated previously, because the contract is not modified by such evidence; rather, its enforceability is called into question. Since the statute of frauds is concerned primarily with the enforceability of agreements, it logically follows that the parol evidence rule does not apply to evidence of condition precedents. Nonfinalized, Partially Written and Partially Oral, Contracts When a contract consists of both written and oral elements, judges tend to treat the agreement as nonfinalized. Accordingly, the judge makes the assumption that the parties do not intend the written agreement to represent the entire agreement. Therefore, oral evidence related to the contract is admissible because the written document is not the complete and final representation of the agreement. Contracts Containing Ambiguous Terms When a contract contains what the court deems to be ambiguous terms, the court is faced with a dilemma in interpretation. To attempt to reach the most accurate interpretation of the original agreement, the court allows evidence, even if it is oral, for the sole purpose of clarifying ambiguous terms. As with evidence regarding orally

agreed-on condition precedents, evidence used to clarify ambiguity is not believed to modify the contract but, rather, to clarify it. Accordingly, oral evidence related to ambiguity is admissible only to clarify, and not to change, any of the contractual terms. Incomplete Contracts When a contract is fundamentally flawed because it is missing critical information, courts can allow parol evidence to provide the missing information. Typically, the missing information is related to essential terms of the contract. Parol evidence will be admitted to clarify the contract by filling in the missing parts while not modifying, in any substantial way, the written agreement. Parol evidence is used to facilitate business transactions as opposed to forcing the parties to enter into a new, complete agreement. Contracts with Obvious Typographical Errors Whenever a written agreement under the statute of frauds contains a serious, and obvious, typographical error, parol evidence is admissible to demonstrate that the typo was a typo and to set forth the proper term. Allowing parol evidence to correct typos does not fundamentally alter the written agreement because the typo is not an accurate reflection of the parties' agreement. The agreement is not altered by correcting a typo; rather, the agreement is clarified. Void or Voidable Contracts Certain conditions can make an otherwise valid contract void or voidable. (Refer to Chapter 9 for an in-depth discussion of what makes a contract void or voidable.) Although the contract does not list these conditions, the courts allow parol evidence to demonstrate that the contract is void or voidable. As with the vast majority of the exceptions to the parol evidence rule, allowing evidence that proves a contract is void or voidable does not fundamentally alter the terms of the contract. Rather, the parol evidence would address the enforceability of the agreement, which is not the same as changing the terms of the agreement. Furthermore, evidence of a defense against a contract is admissible to prove a contract is void or voidable. Evidence of Prior Dealings or Usage of Trade This final exception, although directly related to those already mentioned, actually falls under the UCC and not the statute of frauds. Regardless, this exception also allows otherwise inadmissible parol evidence for a specific reason. Page 290 According to the UCC, parol evidence is admissible for the sake of clarification if the evidence addresses prior dealings between the parties or usages of trade in the same business field as that which the parties are in.15 Evidence related to past dealings can help clarify missing or ambiguous terms by examining how the parties had previously interacted. The assumption is that parties will continue to interact in a similar manner because repeated interactions tend to indicate pleasant interactions between the parties. Therefore, if a term is missing or ambiguous, the courts rely on evidence of what was done

between the parties in the past to attempt to gauge what was intended in the contract in question. Similarly, when a contract is ambiguous or incomplete, the courts examine the standard practices in the business. Here, the courts are assuming that businesses intend to engage in standard transactions. Furthermore, the courts believe that common business practices might sometimes be overlooked and, therefore, not be included when these common practices accurately reflect the intentions of the parties involved. Once again, an exception to the applicability of the parol evidence rule is made to allow evidence to clarify a contract as opposed to changing any material terms of the contract.


Name of the parties to the contract
The subject matter of the agreement
The consideration given for the contract
All relevant contractual terms
The signature of at least the party against whom action is brought

Third-Party Rights to Contracts LO 13-4 Differentiate between an assignment and a delegation. As you read in Chapter 9, contracts involve agreements between two parties in which each party agrees to give something to or do something for the other party. Contracts are typically private agreements, in the sense that the focus of the contract is the two parties involved and no one else. Accordingly, parties not in privity of contract (i.e., parties other than the contracting parties) usually do not have rights to a contract. However, as frequently is the case in the law, there are exceptions to the general rule. There are two main situations in which a third party gains rights to a contract to which she or he is not a party. In the first, one of the contracting parties transfers rights or duties to a third party. In the second,

the third party is a direct beneficiary of a contract involving two other parties. The remainder of this chapter examines both of these situations.

Assignments and Delegations Contracts typically involve an agreement between two parties in which each party agrees to do something for the other. That is, both parties are obligors (contractual parties who agreed to do something for each other) and obligees (contractual parties who agreed to receive something from each other). Consequently, contracts create a situation in which each party has a duty to perform the agreed-on action and a right to be the recipient of the other party's duty. These rights and duties can be transferred to third parties—parties not part of the original contract. The following sections discuss both the transfer of rights (assignment) and the transfer of duties (delegation) to third parties. Assignment Assignment occurs when a party to a contract (an assignor) transfers their rights to a contract to a third party (an assignee). In other words, the assignor gives to the assignee the right to collect what was contractually agreed on in the original contract (see Exhibit 13-3). For example, Lisa agrees to sell her car to Luke for $8,000. Lisa then assigns her right to receive Luke's payment to Kelly. Kelly, who was not part of the original contract between Luke and Lisa, is an assignee and now has the right to receive payment from Luke for Lisa's car. Page 291 Exhibit 13-3Assignment of Rights GLOBAL Context Digital Archive Japan/Alamy Stock Photo Assignment of Rights in Russia Almost all developed market economies permit the free assignability of contract rights. Assignments are important because they play a crucial role in business financing. Banks and businesses make loans and pay debts through assignments. In Russia, civil law is operated primarily by the Russian Civil Code. The Russian law does not address the assignment of a contract in the same manner as does U.S. law. Instead, the Russian Civil Code refers to the assignment of rights as an assignment of claim. The economic or monetary rights of the assignor may be transferred to another person; however, the Russian Civil Code states that "rights which are closely related with the personality of the creditor, such as alimony rights or rights for compensation of personal injury," are not permitted to be assigned to another person. Unlike the case in the United States, where assignments can be given orally or in writing, in Russia, the Civil Code requires assignments to be produced in writing. The debtor (or obligor) is not required to perform the obligation to the new assignee until he or she receives written proof that the assignment took place. The assignment of rights, or assignment of claims, in Russia is highly regulated by the Russian Civil Code. LO 13-5 Recall the rights and

duties of an assignee. When an assignor transfers their rights to an assignee, the assignor legally gives up all rights they previously had to collect on the contract.16 Now the assignee may legally demand performance from the other party to the original contract. In our example, once Lisa transfers her right to Kelly, Lisa can no longer require Luke to pay her for her car; however, Kelly can request Luke to pay her for Lisa's car. The assignee essentially fills in for the assignor as the legal recipient of the contractual duties. As such, the assignee acquires the same rights the assignor had. The assignee is offered no additional protections. Moreover, the obligor (the other party to the contract, who owes a duty to the assignee) may raise any of the same defenses for nonperformance to the assignee as they would have been able to raise against the assignor. Thus, if Lisa failed to deliver her car to Luke, he can legally refuse to pay Kelly on the basis of Lisa's breach of contract. It does not matter that Kelly had no duty in the original contract; she is subject to the same defense Luke had against Lisa; therefore, Kelly would not be paid in this situation. Although there is no legally required wording to be used or forms to be filled out for assignments to be valid, certain restrictions exist. First, although assignments may be given orally or in writing, the UCC requires assignments to be in writing when the amount being assigned is greater than $5,000.17, 18 Furthermore, assignments covered by the statute of frauds also must be in writing. Because it is difficult to prove the existence of assignments given orally, it is usually suggested that assignments be in writing. Page 292 Second, an assignee must agree to accept the assigned rights. An assignee may decline an assignment if they have not legally agreed to the assignment and they decline in a timely fashion after learning about the assignment and its terms.19 There is no protocol an assignee must follow to reject an assignment, but once the assignment is rejected, it is considered rejected from the time it was first offered. Third, in some situations contractual rights cannot be assigned.20 Rights That Cannot Be Assigned Exhibit 13-4 lists the four situations in which contractual rights cannot be assigned to a third party. We discuss each of them here. Exhibit 13-4Contractual Rights That Cannot Be Assigned Rights that are personal in nature. Rights that increase the obligor's risk or duties. Rights whose assignment is prohibited by contract. Rights whose assignment is prohibited by law or public policy. First, the rights to a contract cannot be assigned when the contract is personal in nature. For a contract to be personal in nature, the obligor must have promised something specific to the person receiving it. Because the subject matter of the contract is personal, a third party cannot legally become the recipient. The one exception occurs when the only part of a contract left to be fulfilled is the payment, because rights

to payment can always be assigned.21 Second, rights cannot be assigned when the assignment would increase the risk or duties the obligor would face in fulfilling the original contract. For example, Ben agrees to replace the siding on Erin's two-bedroom ranch house. Erin cannot assign her right to Ben's services to Chris, who lives in a three-story, five-bedroom house, because Ben's (the obligor's) duties would be greatly increased from the work required in the original contract with Erin to the work required in an agreement with Chris. Third, rights cannot be assigned when the contract expressly forbids assignments. When parties include an antiassignment clause in their contract, the parties are attempting to limit their ability to assign their rights under the contract. However, the wording of the antiassignment clause is determinative regarding the effectiveness of the clause. That is, if worded improperly or ambiguously, the clause does not effectively limit assignments. Most courts consider contractual prohibitions against assignments to be promises. Consequently, courts consider an assignment made despite an antiassignment clause to be effective, but the party who makes the assignment will still be liable for breaching the terms of the contract. Moreover, unless the clause is very specific in what it prohibits, the court will generally interpret the antiassignment clause as preventing delegation of duties, not assignment of rights.22 A clause stating, "All assignments are void under this contract," would be considered effective. In contrast, when a contract includes a clause explicitly permitting assignments, the parties may assign rights, even when assignments would normally be considered improper because of an increased duty, risk, or burden to the obligor.23 Even in the presence of an antiassignment clause, there are exceptions in which assignments can still be made. For instance, antiassignment clauses do not affect assignments made by operation of law. That is, if a law necessitates an assignment, such as in bankruptcy cases, the assignment is effective regardless of any contractual agreement to the contrary. Likewise, as previously stated, the right to assign monetary payments cannot be denied. Therefore, even when a contract has an antiassignment clause, either party may still assign his or her right to receive payment.24 Part of the reason the law does not bar the right to receive payment is that businesses often transfer rights to payments in the regular course of business. Also, one's duty to pay is not affected when the party to whom one must make a payment changes. That is, no added burden is placed on the obligor when the recipient of a payment changes, requiring that payment be sent to a different party. Page 293 E-COMMERCE and the Law Buy Now, Assign Later Millennials and Gen Z, seeing their parents' financial anguish suffered under credit card debt, use credit cards at lower

rates than previous generations. Does this mean younger generations patiently save money until they can buy the latest Yeezy’s? Of course not. Fintech companies like Affirm, Afterpay, and Klarna have leaped in to fill the consumer debt gap. You have probably seen their offers when you shop online. These fintech companies let you split multi-hundred-dollar purchases into 2-, 4-, 6-, and even 12-month interest-free payments. Does it seem too good to be true? Buy-now, pay-later lenders state that retailersare willing to pay them higher rates because consumers are more likely to purchase goods by using their services. Additionally, lenders state their services give retailers access to Millennials and Gen Zs who do not have credit cards. Companies like Afterpay supposedly make their profits through increasing volume and rates instead of penalizing consumers with interest and fines. But just because they can profit without slamming consumers with interest does not mean the terms are favorable. For example, Affirm’s contract states borrowers cannot assign their obligations without Affirm’s prior written consent. However, Affirm is allowed to assign rights and obligations to another party without the borrower’s consent or even notice. Just like any loan service, if you become delinquent, the loan may be assigned to a debt collector to hound you. Sources: “Amanda Mull, Why is there Financing for Everything Now?, The Atlantic, avail-able at HYPERLINK “https://nam12.safelinks.protection.outlook.com/?url=https% 3A%2F %2Fwww.theatlantic.com%2Fmagazine%2Farchive%2F2021%2F01%2Fjeans-now-pay-later%2F617257%2F&data=05%7C01%7Camy.gehl %40mheducation.com %7C09635fcf8cee40c516e608da282a1754%7Cf919b1efc0c347358fca0928ec39d8d5%7C0%7C0%7C637866458571175011%7CUnknown %7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C %7C&sdata=ht8UEgohYs3njjzcmnCDsw87T78WrkVRk%2FA5cHB646I %3D&reserved=0” https://www.theatlantic.com/magazine/archive/2021/01/jeans-now-pay-later/617257/ and Alicia Adamczyk, How Online Loans Like Affirmand Afterpay Really Work-and Should You Ever Use Them, June 6, 2019, available at HYPERLINK “https://nam12.safelinks.protection.outlook.com/?url=https %3A%2F%2Fwww.cnbc.com%2F2019%2F06%2F06%2Fhow-affirm-afterpay-online-loans-work.html&data=05%7C01%7Camy.gehl%40mheducation.com %7C09635fcf8cee40-c516e608da282a1754%7Cf919b1efc0c347358fca0928ec39d8d5%7C0%7C0 %7C637866458571175011%7CUnknown %7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwi

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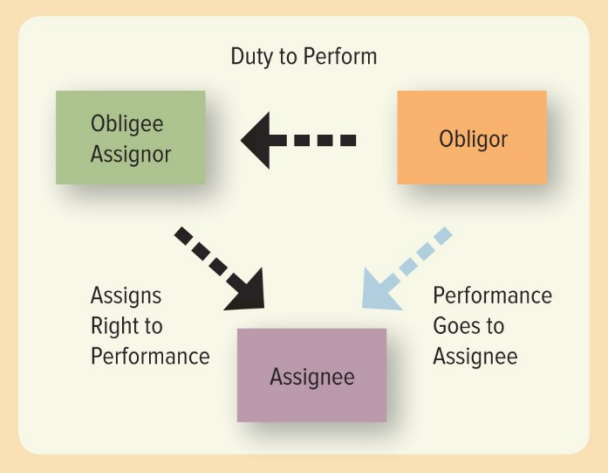
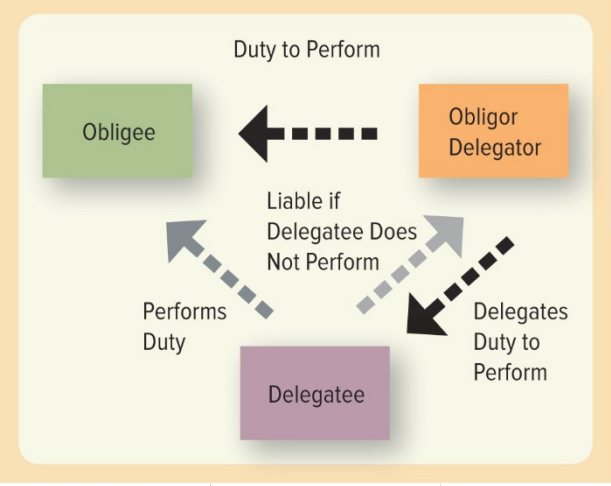
https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/. In addition, assignments for the right to receive damages for a breach of contract to sell goods or services are unaffected by antiassignment clauses.25 Therefore, if one party breaches the contract, the other party can sue the breaching party and transfer the right to recovery to a third party. Fourth, rights cannot be assigned when law or public policy forbids such assignments. Various state and federal statutes prohibit the assigning of specific rights. Even when no statute prohibits an assignment, if the assignment is determined to be against public policy, the assignment is deemed ineffective. Except as outlined in this section, all other rights are presumed to be assignable. Once it has been established that an assignment is valid, notice should be given to the obligor regarding the assignment. BUT WHAT IF. . . WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT? Let’s say in the Case Opener that Tyson was performing in the match for a large sum of money. He wanted to assign his monetary rights to his mother. However, the contract contained an antiassignment clause. Would Tyson still be able to assign his financial rights to his mother? Notice of Assignment Although notice need not be given for a valid assignment, it is usually a good idea for the assignor or the assignee to notify the obligor of the assignment. Assignments are effective immediately, regardless of notice, but by providing notice, the assignor can help avoid two serious complications with assignments. The first complication involves the obligor’s fulfilling of the contractual duty. Without notice of assignment, the obligor can discharge his contractual duties simply by fulfilling his duties to the assignor. Because fulfilling the contract discharges the obligor’s duties, the

act also constitutes a discharge of the assignee’s claim on the assignor’s right. However, after the obligor has been given notice, the obligor can discharge his contractual obligations only by fulfilling the contract for the assignee. Page 294 The second complication regarding a lack of notice involves the granting of multiple assignments of the same right. When an assignor assigns two or more parties the same right, confusion arises about which party has the right to the contract. Most states use the first-assignment-in-time rule, which states that the first party granted the assignment is the party correctly entitled to the contractual right. By giving proper notice, a party can ensure that there is no confusion over when the assignment was made. Furthermore, a minority of states have adopted the English rule, which states that the first assignee to give notice of assignment to the obligor is the party with rights to the contract. Consequently, especially when living in a state using the English rule, parties are well advised to give notice of assignments to ensure that they maintain their assigned rights. The Restatement (Second) of Contracts states a view between the first-assignment-in-time rule and the English rule.26 The Restatement grants legal right to the first assignee in most situations. However, if the first assignment is legally voidable or revocable by the assignor, subsequent assignments are considered evidence of the voiding or revocation of the first assignment. In such situations, the later assignee has legal right to the contract. Also, the later assignee is considered the legal owner of the contractual right if she offers something to the assignor as consideration and then obtains (1) performance by the obligor on his duty, (2) judgment requiring performance by the obligor, (3) a new contract with the obligor, or (4) evidence frequently used to signify a contractual right (e.g., a writing indicating a contractual obligation). Delegation A delegation occurs when a party to a contract (a delegator) transfers their duty to perform to a third party who is not part of the original contract (a delegatee). Whereas assignments transfer rights to a contract, delegations transfer duties (see Exhibit 13-5). Instead of the third party receiving something, as in an assignment, delegations require the delegatee to fulfill the delegator’s contractual obligation to the obligee—the party to the contract to whom a duty is owed. For example, John contracts with Teresa to have her deliver machinery to his factory. Teresa then delegates her duty to Bill, who delivers the machinery to John. Exhibit 13-5Assignment of Duties One important distinction between assignments and delegations involves the rights of the transferring party—the assignor or the delegator. In assignments, after the assignment is made, the assignor has no right left to the original contract. Conversely, with delegations, the delegator is not relieved of their duty to

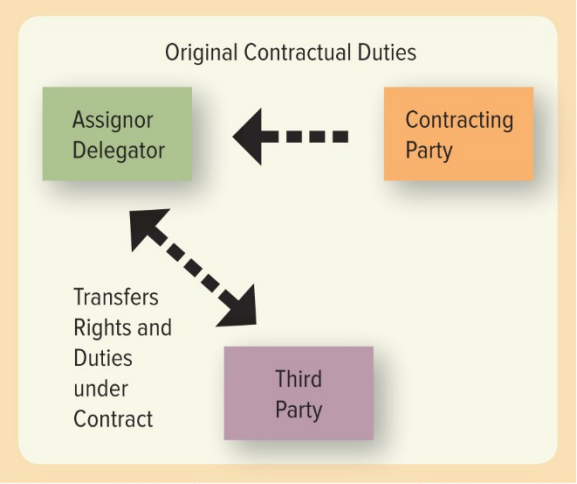
perform by making a delegation. If the delegatee fails to fulfill the contract, the delegator is still liable to the obligee for fulfillment of the contract. In our example, if Bill fails to deliver the machinery to John, Teresa is liable to John for damages. Duties That Cannot Be Delegated As with assignments, the starting assumption is that duties to a contract can be delegated. However, courts tend to examine delegations more closely than assignments. The reasoning is that an assignment usually does not affect the party to the contract who is not involved in the assignment (the obligor), whereas a delegation forces the party to the contract who is not involved in the delegation (the obligee) to receive performance of the contract from a party with whom the obligee did not directly contract. Page 295 Also, just as with assignments, in certain situations, duties cannot be delegated to a third party (see Exhibit 13-6).27 The first type of duty that cannot be delegated, mirroring assignments, is any duty of a personal nature. A duty is personal in nature when it requires the specific talents, skills, or expertise of the obligor. An interesting situation arises when the initial contract bears an implicit assumption that work will be performed by others. In such situations, if supervision is important to the task, the supervision could be considered a personal duty that the obligor may not delegate to others. For example, suppose you are planning to have a new building built and you contract with a well-respected construction manager. They will not build the building; the contract is for their management skills. Their contractual duties would be considered personal and therefore cannot be delegated. Exhibit 13-6Duties That Cannot Be Delegated Duties that are personal in nature. Duties for which the delegatee’s performance will vary significantly from the delegator’s. Duties in contracts that forbid delegations. Delegation for personal duties is admissible where otherwise not allowed when there is an explicit or implicit contractual agreement to allow delegations. Usually, for a delegation of personal duties to be effective, the contract must state that delegations are permitted. Although personal duties typically cannot be delegated, any nonpersonal duties in a contract can be delegated. For example, the delivering of goods, mowing of one’s lawn, paying of money, or painting of a house are all considered nonpersonal duties. These duties are nonpersonal because they do not require particular skill or expertise and therefore can be completed by most people. Accordingly, one can delegate these nonpersonal duties. The second type of duty one cannot delegate is a duty whose performance by the delegatee would vary significantly from its performance by the delegator. To protect the obligee, who is part of the original contract, when performance would differ substantially from that to which the obligee contractually has the right, courts will rule that the

delegation is ineffective. The third type of duty one cannot delegate is any duty whose delegation is prohibited by the contract. When parties include agreements not to delegate, the courts typically treat these inclusions as indications of the parties' desire to consider the contractual obligations as personal. Consequently, the courts frequently find otherwise allowable delegations to be inappropriate when an agreement not to delegate is in the contract. However, even if a clause prohibiting delegations exists, the courts will probably allow delegations to occur if they are impersonal. For example, courts consider the payment of money impersonal, and therefore delegable, even if a contract prohibits delegations. BUT WHAT IF. . . WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT? Assume that Mike Tyson had been hired for the match because of his fame and his enhanced skills. If Tyson tried to delegate his duties to another athlete who was neither famous nor highly skilled, would such a delegation of duties be lawful?





Assignment of the Contract Frequently, contracts contain ambiguous language that makes it unclear what is being assigned or delegated. Examples of ambiguous language are “I assign the contract” or “I assign all of my rights under the contract.” When a court cannot clearly tell what the parties intended, the court usually considers the assignment to be both of rights and of duties. In other words, when ambiguous language is used, the court considers that the assignor has assigned his rights and delegated any duties he had under the contract (see Exhibit 13-7). Doing so removes any right the assignor had to collect under the contract, but he is still liable to the obligee for any duties the delegatee, who is also the assignee, fails to perform.



Third-Party Beneficiary Contracts We have thus far learned about one of the ways in which third parties may obtain rights to a contract: through assignments or delegations. We now move on to the other way, which is that the third party is an intended beneficiary of a third-party beneficiary contract. A third-party beneficiary contract is created when two parties enter into a contract with the intended purpose of benefiting a third party. To be an intended third-party beneficiary, the third party does not need to be explicitly named in the contract as long as the terms of the contract or events occurring after the creation of the contract make it clear who the intended recipient of the contractual benefits is. Intended Beneficiaries LO 13-6 Differentiate between an intended and an incidental beneficiary. Early in the common law, courts had difficulty when contracts were written to benefit third parties. The courts were not sure how to treat these contracts and

usually deemed third parties to have no rights to contracts to which they were not in privity. Now, however, third parties who are intended beneficiaries have the right to enforce contracts. An intended beneficiary is a third party to a contract whom the contracting parties intended to benefit directly from their contract. Intended beneficiaries may enforce their rights to a contract when both parties to the contract intended for the third party to benefit. In determining whether a third party is an intended beneficiary, courts ask whether the contracting parties intended the third party to be the "direct," "primary," or "express" beneficiary of the contract. A good example of an intended third-party beneficiary contract would be in a contract between a woman and a car dealership in which she paid the dealership to deliver a car to her daughter for a birthday present. Page 297 BUT WHAT IF. . . WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT? Let's say that a venue owner contacted Tyson to come perform in a match at his venue. Tyson will volunteer to compete in a match and all of the money from the ticket sales will go to charity. Is there a third-party beneficiary in this scenario? Also, who is the promisor? What is the promise? The promisor in a third-party beneficiary contract is the party to the contract who made the promise that benefits the third party. The promisee is the party to the contract who owes something to the promisor in exchange for the promise made to the third-party beneficiary. For example, Amanda contracts with Alex to clean his house. In exchange, Alex will pay Amanda's credit card debt. The credit card company is the third-party beneficiary because the contract is created to benefit the company. Alex is the promisor, for he made the promise to pay the third-party beneficiary. Amanda is the promisee because she owes a duty to the promisor, Alex. In a third-party beneficiary contract, the intended beneficiary may sue the promisor to enforce the contract. Although the promisee typically owes something to the third-party beneficiary before the contract with the promisor exists, if the third party sues the promisee after the promisor does not fulfill his or her obligations, the promisee can then sue the promisor for breach of contract. Therefore, courts allow the third-party beneficiary to sue the promisor, thus eliminating the litigation that would ensue if the promisee sued the promisor. In our example, if Alex fails to pay the credit card company for Amanda's debt, the credit card company has the right to sue Alex, even though it is Amanda's debt. Let us return to the Case Opener. The fans of the Tyson fight argued that they were third-party beneficiaries and therefore had rights under several contracts that were violated when Tyson was disqualified early in the fight. Boxing matches are widely viewed events, and one can argue that the fights are organized for the enjoyment of the fans. Does the idea of boxing

matches being organized for the fans make the fans the “direct,” “primary,” or “express” beneficiaries of contracts involved in the fight? In other words, are the fans of the Tyson fight intended beneficiaries to the contracts Tyson entered when agreeing to the fight? What else do we need to know before we can determine whether the fans have a legal right to a refund? There are two types of intended beneficiaries: creditor beneficiaries and donee beneficiaries. Creditor Beneficiaries A creditor beneficiary is a third party who benefits from a contract in which the promisor agrees to pay the promisee’s debt. In our previous example, because Alex (the promisor) agreed to pay the debt of Amanda (the promisee), Amanda’s credit card company is a creditor beneficiary. Case 13-3 is a famous dispute in which the courts began to recognize the rights of third parties to sue promisors for performance. CASE 13-3 LAWRENCE v. FOX Court of Appeals of New York 20 N.Y. 268 (1859) FACTS: In November 1857, Holly, at the request of Fox, loaned him $300. Before loaning the money, Holly informed Fox that Holly owed Lawrence $300, due the next day. In consideration of the loan, at the time of the loan, Fox agreed to pay Lawrence for Holly the next day. Fox did not pay, and Lawrence sued him. Fox sought to dismiss the charges because there was no proof to show that Holly was indebted to Lawrence, Fox’s agreement with Holly to pay Lawrence was void for want of consideration, and there was no privity between Lawrence and Fox. Fox’s motion to dismiss was denied. The jury ultimately found in favor of Lawrence for the sum of the loan plus interest. Fox appealed and the judgment was affirmed. Fox then appealed again. ISSUE: Does Lawrence have the right to sue Fox, the promisor, for payment? REASONING: There is a principle of law, found in English law as well as in the law of many states, that if one person makes a promise to another for the purpose of benefiting a third party, that third person may “maintain an action upon it.” Although many of the preceding cases in which this principle was applied were trust cases, nothing about the law requires the case to be a trust case. Fox’s duty to pay Lawrence in return for the loan he received from Holly was a clear condition of the loan. The spoken promise is equal to a written promise in this case. Therefore, Lawrence should receive payment from Fox in the interest of justice, even if the law could be more narrowly interpreted. DECISION AND REMEDY: The decision of the earlier court was affirmed. Fox was required to pay Lawrence as he had promised Holly. SIGNIFICANCE OF THE CASE: This case was one of the earliest cases that upheld the rights of third parties to sue promisors to have agreements enforced. CRITICAL THINKING Form an opinion about the contemporary relevance of this ruling. Given the widespread and extremely significant changes in U.S. society and the world over the past 150 years, what is the

justification for consideration of such an old case? How does this type of process aid our legal system? How might it detract from the reasonableness of modern deliberations? ETHICAL DECISION MAKING Consider the actions of Fox, both leading up to and through the course of the legal dispute. From an ethical standpoint, which stakeholders was Fox considering? What values was he attempting to uphold? Page 298 The fans in the Tyson case argued that they are intended beneficiaries. If the fans are correct, and we know Tyson did not have a debt to the fans, then they must be donee beneficiaries. Does an agreement to perform create a situation in which the audience members become the intended beneficiaries of the performance? Donee Beneficiaries The other type of intended beneficiaries is donee beneficiaries. Donee beneficiaries are third parties who benefit from a contract in which a promisor agrees to give a gift to the third party. The most common form of donee beneficiary contracts is life insurance policies. Someone (the promisee) pays premiums on a life insurance plan to have the insurer (the promisor) agree to pay a third party (the donee beneficiary) on the promisee's death. Vesting of Rights Although an intended beneficiary can enforce their rights to a contract, they cannot do so until their rights to the contract vest, that is, until the rights mature so that a party can legally act on the rights. Before a third party's rights have vested, the original contracting parties can make changes to the original contract without the permission of the third party. For example, third-party rights in a life insurance policy do not vest until the promisee's death. Consequently, Jane (the promisee) can change the intended beneficiary of her life insurance policy from Mary to Peter. Jane does not need Mary's permission, and Mary cannot sue Jane because Mary's rights have not vested. Generally, one of three things must occur for a third party's right to a contract to vest.28 First, under certain circumstances, third-party rights vest immediately. When rights vest immediately, the third party can enforce the contract at any time. These rights take effect instantaneously, even if the beneficiary does not know about the contract. Second, rights may vest when the beneficiary decides to accept the rights to the contract. Sometimes the beneficiary must positively accept the rights, such as by notifying the contracting parties of acceptance. However, in the absence of an overt act of rejecting the rights to a contract, acceptance is assumed when the beneficiary becomes aware of the contract. Page 299 Third, rights may vest when the beneficiary changes his position because of reliance on the contractual rights. In other words, the beneficiary must take some action he would not have taken otherwise because he is expecting to benefit from the contract. For example, Vince is a third-party beneficiary to a contract. When he finds out about the contract, he decides

to lease a new car because he is expecting to benefit from the contract. Obtaining the lease would cause his rights to the contract to vest because doing so demonstrates a change in position based on reliance on the contract. If a contract specifies that the original contracting parties maintain the right to alter or rescind the contract, the vesting of the third party's rights does not preclude the promisor or the promisee from changing the original contract. Many states hold that donee beneficiary rights vest before creditor beneficiary rights. The rationale is that even if the contract is altered when there is a creditor beneficiary, the creditor beneficiary still maintains her rights against the debtor (the promisee). Donee beneficiaries do not have the same rights as creditor beneficiaries; thus many states allow their rights to vest more quickly than those of creditor beneficiaries. LO 13-7 Differentiate between a creditor beneficiary and a donee beneficiary. Creditor versus Donee Beneficiaries There are two main distinctions between creditor beneficiaries and donee beneficiaries (see Exhibit 13-8). The first distinction is based on the reason the third-party beneficiary contract was created. If the promise in the contract is intended to release a party from an obligation to a third party, such as the paying of one's debt, the contract involves a creditor beneficiary. Conversely, if the contract intends to grant a gift to a third party, the third party is a donee beneficiary. Exhibit 13-8Creditor versus Donee Beneficiaries CREDITOR BENEFICIARY DONEE BENEFICIARY Purpose of the Contract Contractual performance fulfills an obligation to a third party. Contractual performance gives a gift to a third party. Enforcement of Rights Beneficiary can enforce rights to a contract if the contract is valid and the rights have vested. Beneficiary has limited ability to enforce contracts, depending on the jurisdiction. Beneficiary can enforce rights against the promisor or the promisee. Beneficiary can enforce rights against the promisor. The second distinction involves the conditions under which an intended beneficiary can enforce her rights under a contract. Creditor beneficiaries can enforce their rights under a contract whenever the contract is valid. Donee beneficiaries can enforce their rights to most contracts. However, some jurisdictions do not allow donee beneficiaries to enforce their contractual rights in all situations. When a donee beneficiary can enforce their rights under a contract, he may do so only against the promisor. The reason the donee beneficiary cannot sue the promisee is that the promisee had no duty to the donee beneficiary. In contrast, creditor beneficiaries can sue the promisor or the promisee for performance because both parties owed a duty to the creditor beneficiary. However, if the creditor beneficiary wins a judgment against one party, they may not seek judgment against the other party. In addition, if a creditor beneficiary wins judgment against the

promisee, the promisee may sue the promisor to recover under a theory of breach of contract.29 It is not always easy to determine when someone is a creditor or a donee beneficiary. Sometimes a contract is created for reasons that are intended both to be charitable and to pay a debt. Given the lack of clear distinction of when someone is a creditor beneficiary and when they are a donee beneficiary, the Restatement (Second) of Contracts takes a different approach.30 The Restatement focuses on the distinction between intended and incidental beneficiaries. Page 300 Creditor and donee beneficiaries are both intended beneficiaries, and, according to the Restatement, intended beneficiaries have the right to enforce a contract. When it is clear that the contract was created for the benefit of a third party and that performance of the contractual duties will pay off the payee's debt or give a gift as the payee intended, the third party is an intended beneficiary. Incidental Beneficiaries As the Case Nugget at the end of this section illustrates, it is not always easy to know whether a party is an intended or incidental beneficiary. Similar to intended beneficiaries, incidental beneficiaries are third-party beneficiaries to contracts. However, unlike the case with intended beneficiaries, the contracting parties do not intend to benefit incidental beneficiaries. An incidental beneficiary is one who unintentionally gains a benefit from a contract between other parties (see Exhibit 13-9). One significant difference between intended and incidental beneficiaries is that incidental beneficiaries cannot sue to enforce a contract. Incidental beneficiaries maintain no rights to enforce other people's contracts. Simply put, they are incidental beneficiaries. Exhibit 13-9Intended versus Incidental Beneficiaries INTENDED BENEFICIARIES INCIDENTAL BENEFICIARIES Contracting parties intended to benefit the third party with their contract. Contracting parties did not intend to benefit the third party with their contract. Beneficiary has the right to enforce the contract. Beneficiary does not have the right to enforce the contract. Beneficiary benefits from direct reception of contractual performance. Beneficiary benefits from indirect circumstances created by contractual performance. In determining whether a party is an incidental beneficiary, the courts take a reasonable person approach: They ask whether a reasonable person in the position of the party in question would believe that the contracting parties intended to benefit him or her. If the reasonable person would believe that the contracting parties consciously intended to benefit him or her, the courts will consider the party an intended beneficiary. If the reasonable person would not find such intent, the third party is an incidental beneficiary. As a thought experiment, consider the reasonable person test in the context of the Tyson dispute in the Case Opener. For the fans to be able

to receive refunds, the reasonable person in the position of the fans would have to believe that Tyson intended to benefit him or her with Tyson's performance. Do the fans meet the reasonable person test? The courts consider other elements besides the reasonable person approach when determining whether a party is an intended or incidental beneficiary. One factor the courts consider is whether performance of the contract is done directly to the third party. If nothing is explicitly done for or given to the third party, she or he cannot be an intentional beneficiary. The courts also examine the third party's ability to control the specifics of performance of the contract. That is, if a third party has the ability to provide input regarding how the contractual duties are fulfilled, the third party is probably an intended beneficiary. For example, Dianne (the promisee) agrees to pay Charles (the promisor) to paint Henry's (the third party's) house. Henry tells Charles what color he wants the house and when Charles should be there to paint. Henry's ability to control how Charles paints the house demonstrates his status as an intended beneficiary. In addition, note that Charles renders performance directly to Henry, so the explicit-performance factor also indicates Henry's status as an intended beneficiary. A third factor the courts examine in determining the type of third-party beneficiary is whether the contract directly states that the third party is the benefiting party. In our example, because Charles agreed in the contract to paint Henry's house, the contract lists Henry as the beneficiary. Consequently, Henry is an intended beneficiary. Although Henry meets all three additional tests (besides the reasonable person test), it is not necessary to meet all three. If a third party meets at least one of the last three tests, they are usually an intended beneficiary. Page 301 CASE Nugget Intended or Incidental Beneficiary? Mallavarapu v. City of Cedar Falls No. 19-1792 (Iowa Ct. App. 2020) Sometimes it is not easy to know whether a party is an intended or incidental beneficiary, as this case illustrates. This case stemmed from a 1997 storm water easement agreement between the city of Cedar Falls and Thunder Ridge L.P., a limited partnership developing a commercial subdivision in the city. The commercial developer agreed to build and maintain a drainage facility. The contract with the city also allowed the city to maintain the facility and assess the costs against the developer in the case the developer failed to maintain it properly. Years later, nearby homeowners used the stormwater facility as a recreational pond. Residents fished, paddle-boated, and took scenic strolls around the shore. However, the pond quality declined over time. Seven homeowners, calling themselves the "pond scum neighbors," sued Cedar Hills to compel West Ridge to improve the wet detention basin's water quality. The neighbors alleged that they had moved in because of the

recreational pond abutting their property. The city and West Ridge moved to dismiss, arguing the homeowners lacked standing because the homeowners are, at most, incidental beneficiaries. The homeowners contended that they should be considered intended third-party beneficiaries because the detention basin's purpose was to protect their properties from flooding. They further argued that since they are "immediately impacted by the lack of contractually required maintenance," the city should enforce the agreement. Although the trial court denied the homeowner's request, it stated that they did have standing because they "obviously obtained a benefit from the easements." The appellate court ruled that the trial court erred in deciding the homeowners were intended beneficiaries. The appellate court stated that under both the first and second Restatement of Contracts, whether a third-party beneficiary is an intended beneficiary depends on the contracting party's intent. Here, the storm water easement's primary purpose was to control storm water runoff and not to beautify the neighborhood. Accordingly, the appellate court held that the homeowners were only incidental beneficiaries and therefore lacked standing to sue the city. CASE OPENER WRAP-UP Fallout from an Unforgettable Fight The court hearing the Tyson case quickly dismissed the claims. It held that the fans were in no way third-party beneficiaries to any contract into which Tyson, the promoters, or the telecasters had entered. The fans cannot meet any of the tests for an intended beneficiary. Simply put, they are incidental beneficiaries. PRACTICAL TIPS for Business Managers Even though only certain contracts need to be in writing to be enforceable, it is a good idea as a matter of policy to ALWAYS put contracts in writing. Whenever entering into a contract, to ensure that you do not have a parol evidence problem, include a simple statement at the end of the contract stating that the document intended to be the complete and final version of the contract. If a party makes you an oral promise just before you sign a written agreement, and that promise is not in the written agreement, insist that the additional promise be handwritten on the contract and signed by both parties to prevent a potential parole evidence problem. When you are the assignee of a contract, always notify the obligor immediately to ensure that the assignor doesn't try to assign the right to another party. Even though a writing is not necessary for many assignments, it is always a good idea to put all assignments in writing in case a dispute arises over the assignment.

SUMMARY Statute of Frauds The term statute of frauds refers to various state laws modeled after the 1677 English Act for the Prevention of Frauds and

Perjuries. These state laws are intended to (1) ease contractual negotiations by requiring sufficient reliable evidence to prove the existence and specific terms of a contract, (2) prevent unreliable oral evidence from interfering with a contractual relationship, and (3) prevent parties from entering into contracts with which they do not agree. Contracts That Require a Writing Contracts whose terms prevent possible performance within one year. Promises made in consideration of marriage. Contracts for one party to pay the debt of another if the initial party fails to pay. Contracts related to an interest in land. Under the Uniform Commercial Code, contracts for the sale of goods totaling more than $500. Exceptions to the Statute of Frauds The exceptions include (1) admission, (2) partial performance, (3) promissory estoppel, and (4) various exceptions under the UCC. Sufficiency of the Writing A sufficient writing under the statute of frauds must clearly indicate (1) the parties to the contract, (2) the subject of the agreement, (3) the consideration given for the contract, (4) all relevant contractual terms, and (5) the signature of at least the party against whom action is brought. Under the UCC, a writing must clearly indicate (1) the quantity to be sold and (2) the signature of the party being sued. Under neither the statute of frauds nor the UCC must the writing be contained within one document. Parol Evidence Rule The parol evidence rule is a common law rule stating that oral evidence of an agreement made prior to or contemporaneously with a written agreement is inadmissible when the parties intend to have the written agreement be the complete and final version of their agreement. Exceptions to the Parol Evidence Rule Contracts that are subsequently modified. Contracts conditioned on orally agreed-on terms. Contracts that are not final because they are part written and part oral. Contracts with ambiguous terms. Incomplete contracts. Contracts with obvious typographical errors. Voidable or void contracts. Evidence of prior dealings or usage of trade. Integrated Contracts Integrated contracts are written contracts, within the statute of frauds, intended to be the complete and final representation of the parties' agreement, thus precluding the admissibility of parol evidence other than in the exceptions previously listed. Third-Party Rights to Contracts There are two main situations in which a third party gains rights to a contract to which she or he is not a party: (1) One of the contracting parties transfers rights or duties to the third party. (2) The third party is a direct beneficiary of a contract involving two other parties. Assignments and Delegations Contracts typically involve an agreement between two parties: Obligor: Contractual party who owes a duty to the other party in privity of the contract. Obligee: Contractual party who is owed a duty from the other party in privity of the contract. An assignment is the transfer of rights under a contract to a third

party. Assignor: The party to a contract who transfers his or her rights to a third party. Assignee: A party not in privity to a contract who is the recipient of a transfer of rights to a contract. Contractual rights that cannot be assigned: Rights that are personal in nature. Rights that would increase the obligor's risks or duties. Rights in a contract that expressly forbids assignment. A delegation is the transfer of a duty under a contract to a third party. Delegator: The party to a contract who transfers his or her duty to a third party. Delegatee: A party not in privity to a contract who is the recipient of a transfer of a duty in a contract. Contractual duties that cannot be assigned: Duties that are personal in nature. Duties whose performance by the delegatee would be substantially different from that which the obligee originally contracted. Duties in a contract that expressly forbids delegation. Assignment of the Contract When ambiguous language is used, courts interpret the transfer to consist of an assignment of rights and a delegation of duties. Third-Party Beneficiary Contracts An intended beneficiary is a third party to a contract whom the contracting parties intended to benefit directly from their contract. Promisor: A party to a contract who made the promise that benefits the third party. Promisee: A party to a contract who owes something to the promisor in exchange for the promise made to the third-party beneficiary. Creditor beneficiary: A third party who benefits from a contract in which the promisor agrees to pay the promisee's debt. Donee beneficiary: A third party who benefits from a contract in which a promisor agrees to give a gift to the third party. Vest: The maturation of rights such that a party can legally act upon the rights. An incidental beneficiary is a third party who unintentionally gains a benefit from a contract between other parties. That is, it was never the conscious objective of the contracting parties to benefit the third party.

Point/Counterpoint Should Obligors Have a Say in Who Becomes an Assignee? YES NO When two parties enter into a contract together, an agreement is being made between two consenting parties, often for the mutual benefit of each party. In other words, each party often knows what the party is getting into and has no objections to helping the other party in order to receive benefit. However, in the case of assignment, a party may end up owing a duty to another party whom it does not wish to support. For example, if Bob makes a contract with Business X, a business run by a good friend of Bob's, Business X could assign its contract to Business Y, a company that provides a product of the same quality but uses business practices that Bob does not agree with. In this case, Bob is obligated to pay

or otherwise benefit a party that he strongly opposes, which is hardly fair to Bob. Bob may have entered into the contract with the intention of supporting his friend's business, and while he is still indirectly doing so, he must help a business that he detests in order to fulfill his side of the contract. Second, in a case where Business X is assigning the contract in order to avoid breach, Business X is essentially admitting that it cannot fulfill the contract and so Business X is the party that is potentially failing to uphold the contract. Shouldn't Bob, assuming he has upheld his side of the deal, get to pick the business to replace Business X in the contract instead of the party that will fail to honor the deal if Business X doesn't assign? An even more fundamental reason as to why Bob should have a say in his contract with Business X is that he is a party to the contract. If Business X has a say in who it assigns its contract to, shouldn't Bob, who is entitled to the same rights under the contract, have some kind of voice in the matter as well? Allowing the obligor to decide whether the obligor agrees with the assignor's choice of assignee unnecessarily restricts the rights of the assignor. An assignor isn't going to go through the trouble of assigning its contract to another party unless it has a particular need to. Perhaps the assignor can no longer fulfill the contract and is assigning the contract in order to prevent breach, or perhaps the obligor owes a debt to the assignee and wishes to pay it back through assignment. In other words, if the obligor could approve or disapprove of an assignee choice, it could infringe upon the interests of the assignor. Allowing the obligor a say in a potential assignee is redundant, considering the obligor is protected by a guarantee that performance of the contract will not be affected by the assignment. Does it really matter that the obligor is receiving a product or service through a new party as long as it's the same product or service stipulated in the contract? The reasons an obligor would have to reject a potential assignee would likely be entirely arbitrary. Finally, being that the assignor is already going through the burden of having to assign the contract to another party, which effectively surrenders any of the benefits they would have received from the contract, it's unfair to add the additional burden of having the obligor approve or disapprove of the assignee, especially if the obligor will only approve assignments that do not benefit the assignor.

Questions & Problems Explain how the requirements of the statute of frauds under the UCC are different from those under the common law. List the kinds of contracts that require a writing under the statute of frauds. Identify the exceptions to the parol evidence rule and explain why some people might

argue that the parol rule is not very effective. Integrate the concept of assignments with the concept of delegations. Why is it that incidental beneficiaries cannot enforce rights under a contract? Should they be able to enforce such rights? Explain the difference between an assignor's liability and a delegator's liability after rights have been transferred to a third party. Explain the desirability to business of allowing a transfer of rights or duties to third parties. Plaintiff filed a petition for preliminary injunction asking the court to enjoin the sale of a 1991 Ferrari F40 to Karam Automotive Inc., as well as a complaint seeking specific performance of the alleged contract to sell the Ferrari to plaintiff for $800,000, or in the alternative, damages for defendant's breach of the alleged contract. Michael Haber alleged the following: on December 28, 2013, he met with Mr. Moore, who held himself out as the Executor of Mr. Brehaut's Estate and expressed to Mr. Moore his interest in purchasing a Ferrari that was part of the estate. On January 1, 2014, Mr. Moore informed Mr. Haber that the Estate of Mr. Brehaut would accept $800,000 for the Ferrari and said to him, "It's your car." On January 6, 2014, following an inspection by Mr. Haber's mechanic, Mr. Moore shook Mr. Haber's hand and said, "We have a deal." After the oral agreement was reached, Mr. Moore advised Mr. Haber that there was an outstanding loan against the Ferrari, and that he would have to contact the bank to satisfy the loan. Later, when Mr. Haber arrived at his office, he received a phone call from a credit union employee stating that $75,554.30 was required to pay off the loan. On January 10, 2014, in a phone conversation, Mr. Moore told Mr. Haber, "You're going to be pissed at me;" someone had offered him a higher amount for the car, and so he did not agree to sell the car to Mr. Haber. In his answer, the defendant denied that an agreement had been reached and pleaded the statute of frauds. Do you think the court applied the statute of frauds in this case to bar the action by the plaintiff? Why or why not? Source: Professional Sales, Inc. v. The Estate Of Joseph S. Brehaut, C. Christopher Moore, Jr., Executor And C. Christopher Moore, Jr. Individually And Joseph S. Brehaut And C. Christopher Moore, Jr. Partnership T/D/B/A Moll's Garage, 2014 Pa. Dist. & Cnty. Dec. LEXIS 768 (2015). The Laths were the owners of a farm that they wanted to sell. Mrs. Mitchell considered purchasing the land but found that an ice house located across the road was objectionable. Mitchell argued that the Laths orally agreed to remove the ice house in consideration of her promise to purchase the property, which she agreed to purchase for $8,400 in a written contract. After Mitchell moved into her new home and made several improvements to the land, the Laths never removed the ice house and expressly communicated their intention not to do so. Mitchell sued the Laths for breach of contract. What effect does the parol

evidence rule have on the admissibility of the oral agreement to remove the ice house? Why this effect? Source: Mitchell v. Lath, 247 N.Y. 377 (1928). St. John’s Holdings (SJH), the buyer, and Two Electronics, the seller, were negotiating the terms of a land sale through email. Over the course of the exchange, SJH sent four unsigned drafts of a letter of intent to Two Electronics. After the final draft, Two Electronics’s agent sent SJH’s agent a text message stating that Two Electronics would sign the letter if SJH signed first and provided a check. SJH signed the letter of intent and gave a check to its agent to deliver to Two Electronics’ agent. After the signing, the SJH agent sent a text to Two Electronics’ agent stating, “I have the signed LOI and check it is 424 [PM] where can I meet you?” The two agents spoke over the phone later that day and agreed that SJH’s agent would bring the signed letter and check to Two Electronics’ agent’s office. On the same day of the texts and phone calls, Two Electronics accepted a third party’s offer to buy the land. Two Electronics never signed the letter of intent or told SJH that it had sold the land to a third party. SJH sued to enforce the letter of intent arguing that it was binding based on the emails and texts between the agents and that those communications satisfied the essential terms of the statute of frauds. If you were the judge in this case, how would you rule? Can text messages fulfill the writing requirements of the statute of frauds? Source: St. John’s Holdings, LLC v. Two Electronics, LLC, MISC 16-000090, April 14, 2016. Page 305 . Beng-Yu Woo, Xiaoming Li, and Vivian Hsiun created and patented an invention titled “Full Duplex Single Chip Video Codec.” At the time, Woo, Li, and Hsiun were employees of Infochips Systems, Inc. Through a series of buyouts and transfers, Infochips and its assets came to be owned by AVC Technology, Inc. In 1995, Woo and Li assigned their ownership interests in the invention to AVC. Hsuin, however, refused to assign her interests. AVC was later purchased and dissolved by Advanced Video Technologies LLC, the plaintiff in this case. In 2011, Advanced Video filed a patent infringement suit against HTC Corporation regarding its alleged use of the invention. That case was dismissed for lack of standing; the court reasoned that because Hsuin did not assign away her interests in the invention, Advanced Video did not have an ownership interest in the patent. In its appeal, Advanced Video pointed to the 1992 employment agreement between Infochips and Hsuin. The agreement stated, in relevant part: I [Hsuin] agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and will assign to the Company all my right, title, and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets which I may solely or jointly conceive or

develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company. Advanced Video argues that the “will assign” language of the employment agreement means that Hsuin assigned her rights to the invention to Infochips, and that Advanced Video is the rightful owner of the patent following the series of transfers. What do you think of Advanced Video’s argument? Is “will assign” the same thing as “assign”? How do you think the appellate court ruled? Source: Advanced Video Tech. LLC v. HTC Corp. (Fed. Cir. 2018). In 2001, the City of New York and the Dormitory Authority of the State of New York (DASNY) entered into an agreement to build a forensic biology laboratory in Manhattan. Per the agreement, DASNY would finance and manage the design and construction of the laboratory. Before the project commenced, DASNY entered into a contract with Perkins Eastman Architects, P.C., to provide design, architectural, and engineering services for the project and supervise its construction. Pursuant to a separate contract, DASNY retained Samson Construction Co. to provide excavation and foundation work for the project. The contract between DASNY and Samson provided that the City “is an intended third-party beneficiary of the Contract for the purposes of recovering any damages caused by [Samson].” No such language existed in the Perkins contract. Work began on the project in May 2002. Soon thereafter, it was found Samson failed to properly install an excavation support system, leading to an 18-month delay and additional costs of $37 million. DASNY and the City filed suit against Samson in 2006, and later added Perkins as a defendant in 2007. The complaint alleged that Perkins breached the contract by failing to properly supervise Samson, which led to its faulty work. Perkins moved to dismiss on the grounds that, among other things, the City was not an intended third-party beneficiary to the contract between it and DASNY. How do you think the court ruled? Do you think it is important that the City was not directly named as a third-party beneficiary in the Perkins contract? How does the language in the Samson contract play into your answer? Source: Dormitory Authority of the State of New York v. Samson Construction Co., 2018 NY Slip Op 01115. Plaintiff entered into a contract with a general contractor to construct a facility. The general contractor subcontracted the roofing installation to Defendant. When the roof began to leak, Plaintiff filed a complaint against the general contractor and Defendant, alleging breach of contract, among other claims. The superior court granted Defendant’s motion for summary judgment, holding that Plaintiff was only an incidental beneficiary, as opposed to an intended beneficiary, of the subcontract between Defendant and the general contractor. Plaintiff appealed. How do you think the state supreme court

ultimately decided this case? Why? Source: Hexagon Holdings, Inc. v. Carlisle Syntec Inc., Rhode Island Supreme Court, Docket No. 17-175, January 17, 2019, available at https://law.justia.com/cases/rhode-island/supreme-court/2019/17-175.html?utm_source=summary-newsletters&utm_medium=email&utm_campaign=2019-01-18-contracts-510993353a&utm_content=text-case-title-10. In 2006, Marshall Johnson, then a minor, was injured in a car accident. In 2008, the tortfeasor's insurer, State Farm, and Johnson's guardian settled a personal injury claim on Johnson's behalf through a structured settlement agreement (SSA). The SSA contained an antiassignment clause that prevented Johnson, but not State Farm, from assigning the right to receive payments from the SSA. State Farm went on to assign its rights to MetLife. In 2013, 23-year-old Johnson was short on cash. He contacted J. G. Wentworth, a factoring company, about selling his $29,000 annuity (which was to be doled out in smaller payments until 2020) for $17,250 cash. Wentworth filed a petition to obtain approval to have the SSA rights transferred to Wentworth. MetLife filed objections, citing the antiassignment clause. A hearing on the petition was held and the trial court allowed the transfer due to Johnson's need for the funds. MetLife appealed the trial court's decision. How do you think the appellate court ruled? Does MetLife have a say in the matter? Source: Johnson v. J.G. Wentworth Originations, LLC, Case No. A156843, -- P.3d --, 2017 WL 767659, 2017 Ore. App. Lexis 280 (Or. Ct. App. Mar. 1, 2017). Page 306 . Richard Brumitt, owner of Southway Systems, Inc., agreed to sell his stock in the company to DTSG, Ltd. DTSG's owner, Don Oprea, contacted Tim Duffy, president of First Bank's Small Business Administration loans division, to secure financing for the deal. Oprea urgently expressed to Duffy that he needed to close on the loan by the year's end because Brumitt had pending offers from other interested buyers. Duffy assured Oprea that the loan could be closed by then. However, things did not go as planned. For over 14 months, First Bank scheduled and postponed numerous closings. During this time, Duffy continued to promise Oprea that the loan would go through, and Southway continued to sink. Oprea finally sought financing elsewhere, but he never obtained a loan nor acquired Southway. By the time of the trial, Southway had already failed. Brumitt attempted to sue First Bank as a third-party beneficiary to the agreement between First Bank and DTSG. As evidence of his third-party beneficiary status, Brumitt submitted the three loan commitment letters executed by DTSG and First Bank. First Bank pointed out, however, that the language of the letters was unambiguous and did not clearly express the parties' intent to make Brumitt a third-party

beneficiary. Indeed, the letters did not mention Brumitt at all. Does Brumitt have standing to sue as a third-party beneficiary? How do you think the court ruled on the issue? Source: First Bank v. Brumitt, Supreme Court of Texas No. 15-0844 (2017) Richard Brumitt, owner of Southway Systems, Inc., agreed to sell his stock in the company to DTSG, Ltd. DTSG's owner, Don Oprea, contacted Tim Duffy, president of First Bank's Small Business Administration loans division, to secure financing for the deal. Oprea urgently expressed to Duffy that he needed to close on the loan by the year's end because Brumitt had pending offers from other interested buyers. Duffy assured Oprea that the loan could be closed by then. However, things did not go as planned. For over 14 months, First Bank scheduled and postponed numerous closings. During this time, Duffy continued to promise Oprea that the loan would go through, and Southway continued to sink. Oprea finally sought financing elsewhere, but he never obtained a loan nor acquired Southway. By the time of the trial, Southway had already failed. Brumitt attempted to sue First Bank as a third-party beneficiary to the agreement between First Bank and DTSG. As evidence of his third-party beneficiary status, Brumitt submitted the three loan commitment letters executed by DTSG and First Bank. First Bank pointed out, however, that the language of the letters was unambiguous and did not clearly express the parties' intent to make Brumitt a third-party beneficiary. Indeed, the letters did not mention Brumitt at all. Does Brumitt have standing to sue as a third-party beneficiary? How do you think the court ruled on the issue? Source: First Bank v. Brumitt, Supreme Court of Texas No. 15-0844 (2017).